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5 Attorneys for Defendant SHOP-VAC  
6 CORPORATION

FILED

08 APR -8 PM 3:18

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10

11 RICHARD A. SILBER, an individual and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 SHOP-VAC CORPORATION, a  
16 Pennsylvania Corporation, and DOES 1  
through 100, inclusive

17 Defendants.  
18  
19

CASE NO.

'08 CV 637 JLS(RBB)

20 NOTICE OF REMOVAL

21 Defendant Shop-Vac Corporation ("Shop-Vac") hereby removes the above-captioned action  
22 from the Superior Court of San Diego County, California, to this Court, pursuant to 28 U.S.C. §§  
23 1332, 1441, 1446, and 1453. In support of this removal, Defendant Shop-Vac states as follows:

24 1. On or about February 25, 2008, Plaintiff Richard A. Silber filed a putative class action  
25 Complaint ("Complaint") in the Superior Court of San Diego County, California, Case No. 37-2008-  
00078687-CU-BT-CTL, naming Shop-Vac as a Defendant.

26 2. The summons and Complaint were deemed served on Shop-Vac on March 9, 2008.  
27 Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

28 ///

CR  
NOTICE OF REMOVAL

1           3.     The Superior Court of San Diego County is located within the Southern District of  
2 California, which is also located in San Diego, California. Thus, venue for the removal is proper  
3 because this is the “district and division embracing the place where such action is pending.” 28  
4 U.S.C. § 1441(a).

5           4.     Pursuant to 28 U.S.C. § 1446(a), a copy of all process and pleadings served upon  
6 Defendant is attached hereto as Exhibit A. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of  
7 Removal is being served upon counsel for Plaintiff and a copy is being filed with the Clerk of the  
8 Superior Court of San Diego County.

9           5.     This case is subject to removal pursuant to the Class Action Fairness Act of 2005  
10 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.).

11           6.     Pursuant to 28 U.S.C. § 1332(d)(2)(A), district courts have original jurisdiction of any  
12 civil action in which (1) the matter in controversy exceeds the sum or value of \$5,000,000.00,  
13 exclusive of interest and costs, and (2) is a class action in which any member of a class of plaintiffs is  
14 a citizen of a State different from any defendant. The claims of the individual class members are  
15 aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000,  
16 exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

17           7.     Plaintiff alleges in the Complaint that “[t]his is a class action case brought on behalf of  
18 all purchasers of wet/dry vacuum products manufactured, distributed, marketed, and/or sold by  
19 SHOP-VAC CORPORATION [sic.] (“SHOP-VAC”).” (Complaint at p.2:¶ 1.) Plaintiff further  
20 alleges that he “brings this action on behalf of himself as an individual and on behalf of all other  
21 persons similarly situated in the State of California who purchased Defendant’s SHOP-VAC wet/dry  
22 vacuum” and that the “members of the Class are so numerous that joinder of all members is  
23 impracticable.” (Complaint at pp.5-6: ¶¶ 20-21.)

24           8.     As alleged in the Complaint, Plaintiff Richard A. Silber is a resident of San Diego,  
25 California, and the putative class members are also residents of California. (Complaint at p. 4, ¶ 20.)  
26 Defendant Shop-Vac is a not a California corporation and its principal place of business is in  
27 Pennsylvania. (Complaint at p. 2: ¶ 5.) Therefore, diversity of citizenship exists as required by 28  
28 U.S.C. 1332 (d)(2)(A).

1           9.       Plaintiff's Complaint seeks money damages for alleged violations of section 17533.7  
2 of the California Business & Professions Code, declaratory and injunctive relief for alleged violations  
3 of the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq., declaratory and injunctive  
4 relief for alleged violations of section 17200 et seq. of the California Business and Professions Code,  
5 and attorneys fees. Plaintiff's attempt to arbitrarily limit the class damages to \$4,999,000.00 by  
6 stipulation in paragraph 24 of the Complaint is invalid and unenforceable. Shop-Vac denies any  
7 liability in this case, maintains that Plaintiff's Complaint fails to state a cause of action as a matter of  
8 law and intends to challenge the appropriateness of class certification upon removal. However, based  
9 upon the allegations in the Complaint, including the specific claims asserted by Plaintiff and the  
10 categories of relief prayed for in the Complaint, Shop-Vac has a good-faith belief based upon  
11 reasonable information and inquiry that the "amount in controversy" as that term is used for the  
12 purposes of removal jurisdiction, would exceed the sum or value of \$5,000,000 if the class is  
13 certified. Accordingly, this action satisfies the matter in controversy requirement of 28 U.S.C.  
14 § 1332(d)(2).

15           10.       Specifically, Plaintiff alleges at p. 7: ¶ 24 that the damages to each individual class  
16 member "do not exceed \$10.00." Shop-Vac estimates in good faith that it has sold in excess of  
17 600,000 units into California during the relevant statutory period. Simple math reveals that based on  
18 Plaintiff's own allegations, the "amount in controversy" presented by the pleadings would exceed the  
19 jurisdictional limit of this Court.

20           11.       In addition, plaintiffs claim injunctive relief. The value of the injunctive relief is not  
21 specified by plaintiff but clearly if plaintiff's allegations are to be believed, it represents a significant  
22 monetary value and certainly greater than \$1,001. Adding the value of the injunctive relief to the  
23 \$4,999,000 already alleged by plaintiff exceeds the \$5,000,000 minimum needed to satisfy CAFA.  
24 As a result, Plaintiff has pled itself into federal jurisdiction.

25           12.       Plaintiff also requests attorneys' fees in the Complaint of an unspecified amount. In  
26 class actions taken through trial, attorneys' fee awards are substantial, and defendant would expect  
27 the attorneys' fees sought in this case to be at least 25-33% of the actual damages sought. Coupling  
28 this level of award with the claim for actual damages and injunctive relief clearly makes the amount

1 in controversy on this class more than \$5,000,000 solely for the purposes of removal analysis on the  
2 face of the Complaint.

3 WHEREFORE, Defendant Shop-Vac Corporation removes this action from the Superior  
4 Court of San Diego County, California.

5  
6 DATED: April 7, 2008

ARMSTRONG TEASDALE LLP

7  
8 By: 

9 KEVIN J. SENN  
10 Attorneys for Defendant  
11 Shop-Vac Corporation  
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**EXHIBIT A**

# SUMMONS (CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** SHOP-VAC CORPORATION,  
a Pennsylvania Corporation, and DOES 1 through 100, inclusive.

Received  
2/28/2008  
Dated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** RICHARD A. SILBER,  
an individual and on behalf of all others similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una Carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la Corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is  
(El nombre y dirección de la corte es):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

- ☐ HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827
- ☐ NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-9043
- ☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
- ☐ RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-6200
- ☐ SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5648
- ☐ JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792

CASE NUMBER:  
(Número del Caso)

**37-2008-00078687-CU-BT-CTL**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JOHN H. DONBOLI (SBN: 205218)

858-793-6244

DEL MAR LAW GROUP, LLP

322 8th Street, Suite 105

Del Mar, CA 92014

DATE: **FEB 25 2008** 2008

(Fecha)

CLERK OF THE SUPERIOR COURT

Clerk, by  
(Secretario)

**K Brown**

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
  - under ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
  - ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
  - ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
  - ☐ other (specify):
4. ☐ by personal delivery on (date):

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6064	
PLAINTIFF(S) / PETITIONER(S): Richard A. Silber	
DEFENDANT(S) / RESPONDENT(S): Shop-Vac Corporation	
SILBER VS. SHOP-VAC CORPORATION	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2008-00078687-CU-BT-CTL

Judge: Luis R. Vargas

Department: C-63

COMPLAINT/PETITION FILED: 02/25/2008

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL  
REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING



JOHN H. DONBOLI (SBN: 205218)  
 JL SEAN SLATTERY (SBN: 210965)  
 DEL MAR LAW GROUP, LLP  
 322 8<sup>th</sup> Street, Suite 101  
 Del Mar, CA 92014  
 Telephone: (858) 793-6244  
 Facsimile: (858) 793-6005

Attorneys for Plaintiff: RICHARD A. SILBER, an individual and on behalf  
 of all others similarly situated

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

RICHARD A. SILBER, an individual and on  
 behalf of all others similarly situated,

Plaintiff,

vs.

SHOP-VAC CORPORTATION, a Pennsylvania  
 Corporation, and DOES 1 through 100,  
 inclusive,

Defendants.

CASE NO. 37-2008-00078687-CU-BT-CTL

**CLASS ACTION**

**COMPLAINT FOR:**

- (1) VIOLATION OF CONSUMERS  
 LEGAL REMEDIES ACT (CIVIL  
 CODE SECTION 1750 ET SEQ.);  
 AND
- (2) VIOLATION OF BUSINESS &  
 PROFESSIONS CODE SECTIONS  
 17200 ET SEQ. (CALIFORNIA  
 UNFAIR COMPETITION LAW)
- (3) VIOLATION OF BUSINESS &  
 PROFESSIONS CODE SECTION  
 17533.7 (FALSE "MADE IN THE  
 USA" CLAIM).

**DEMAND FOR JURY TRIAL**

COMES NOW, plaintiff RICHARD A. SILBER ("Plaintiff"), as an individual and on  
 behalf of the general public and all others similarly situated, by his undersigned attorneys,  
 alleges as follows:

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**NATURE OF THE CASE**

1. This is a class action case brought on behalf of all purchasers of wet/dry vacuum products manufactured, distributed, marketed, and/or sold by SHOP-VAC CORPORATION ("SHOP-VAC"). Through a fraudulent, unlawful, deceptive and unfair course of conduct, SHOP-VAC, and DOES 1 through 100 (collectively "Defendant"), manufactured, marketed, and/or sold a variety of wet/dry vacuum products to the California general public with the false designation and representation that SHOP-VAC's products were "MADE IN THE USA." The "MADE IN THE USA" claim is printed on the products' packaging and typically includes prominent pictures of the U.S.A flag. Despite true facts to the contrary, the SHOP-VAC wet/dry vacuums are substantially made, manufactured or produced from component parts that are manufactured outside of the United States in violation of California law.

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**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter in that Defendants routinely transact business in San Diego County.

3. Venue in this Court is proper pursuant to Code of Civil Procedure Section 395 and 395.5, Business & Professions Code §§ 17203, 17204, and Civil Code § 1780(c) because Defendant does business in San Diego County and Plaintiff's transactions took place within the County.

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**PARTIES**

4. Plaintiff is an individual residing in San Diego, California.

5. Defendant SHOP-VAC is a corporation that is organized and exists under the laws of the State of Pennsylvania. SHOP-VAC's principal place of business is located at 2323 Reach Road, Williamsport, PA 17701. SHOP-VAC may be served with process in this matter by serving its principle place of business at 2323 Reach Road, Williamsport, PA 17701.

6. SHOP-VAC is a leading manufacturer and distributor of wet/dry vacuums in the United States. SHOP-VAC maintains the following website: [www.shopvac.com](http://www.shopvac.com).

7. Plaintiff is ignorant of the true names and capacities of the defendants sued

1 herein as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by such fictitious  
2 names. Plaintiff is informed and believes that each of the fictitious named defendants are legally  
3 responsible in some manner for the occurrences herein alleged, assisted in and about the wrongs  
4 complained herein by providing financial support, advice, resources or other assistance. Plaintiff  
5 will amend the complaint to allege their true names and capacities when ascertained.

6 8. Plaintiff is informed and believes that all defendants were agents, servants and  
7 employees of their co-defendants, and in doing the things hereinafter mentioned, were acting  
8 within the scope of their authority as such agents, servants and employees with the permission  
9 and consent of their co-defendants.

10 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 9. Plaintiff incorporates herein each and every allegation contained in paragraphs 1  
12 through 8, inclusive, as though fully set forth herein.

13 10. Defendant manufactures and markets wet/dry vacuums that have printed on the  
14 product packaging that the SHOP-VAC wet/dry vacuums are "MADE IN THE USA."

15 11. Defendant also routinely places prominent images of the U.S.A. flag on the  
16 packaging of the SHOP-VAC vacuums to falsely signify that they are "MADE IN THE USA."

17 12. Despite true facts to the contrary, the SHOP-VAC wet/dry vacuums are  
18 substantially made, manufactured or produced with component parts that are manufactured  
19 outside of the United States. The foreign component parts that constitute the SHOP-VAC  
20 wet/dry vacuum includes, but is not limited to the: (a) Motor; (b) Motor Components; (c)  
21 Various Electrical Components; (d) Tank Base; (e) Hood; (f) Plastic Hose(s); (g) Vacuum  
22 Accessories; (h) Screws and Fasteners; (i) Filter and/or (j) Dust Bag; which, on information and  
23 belief are made in China and/or Mexico.

24 13. Defendant markets, and continues to market, and represent to the general public  
25 that the SHOP-VAC wet/dry vacuums are "MADE IN THE USA." In addition, Defendant  
26 concealed the material facts at issue herein by failing to disclose to the general public the true  
27 facts regarding the country of origin designation appearing on the SHOP-VAC vacuums.  
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1 packaging. The disclosure of this information was necessary in order to make Defendant's  
2 representation not misleading for want of disclosure of these omitted facts. Defendant possesses  
3 superior knowledge of the true facts which were not disclosed, thereby tolling the running of any  
4 applicable statute of limitations.

5 14. Consumers and users of these products are particularly vulnerable to these  
6 deceptive and fraudulent practices. Most consumers possess very limited knowledge of the  
7 likelihood that products, including the component parts therein, claimed to be made in the United  
8 States are in fact made in foreign countries. This is a material factor in many individuals'  
9 purchasing decisions, as they believe they are supporting American companies and American  
10 jobs.

11 15. Some consumers believe that "MADE IN THE USA" products are higher quality  
12 than their foreign-manufactured counterparts. Due to Defendant's scheme to defraud the market,  
13 members of the general public were fraudulently induced to purchase Defendant's products at  
14 premium prices. During the relevant time period, SHOP-VAC charged excess monies for its  
15 vacuum products, in comparison to its wet/dry vacuum competitors, based on the false "MADE  
16 IN THE USA" designation that was intended to deceive the California consumer. California  
17 laws are designed to protect consumers from this type of false representation and predatory  
18 conduct. Defendant's scheme to defraud consumers is ongoing and will victimize consumers  
19 each and every day until altered by judicial intervention.

20 16. On information and belief, Defendant SHOP-VAC could potentially be  
21 employing hundreds of additional American employees to manufacture its wet/dry vacuums if it  
22 elected to produce all of the vacuum component parts, which SHOP-VAC currently procures  
23 from outside the United States, in its Pennsylvania manufacturing facility.

#### 24 THE PLAINTIFF TRANSACTIONS

25 17. On several occasions during the relevant statutory time period, Plaintiff  
26 purchased at least two SHOP-VAC wet/dry vacuums in San Diego, California. In each case, the  
27 product itself was marked with "MADE IN THE USA." In each case, the SHOP-VAC wet/dry  
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1 vacuum unlawfully contained component parts made outside of the United States and SHOP-  
2 VAC was not entitled to lawfully make a "MADE IN THE USA" representation.

3 18. On information and belief, in each case when Plaintiff and Class Members  
4 purchased a SHOP-VAC wet/dry vacuum they relied upon Defendant's "MADE IN THE USA"  
5 representation in their purchasing decision, which is typical of most California consumers.  
6 Plaintiff and Class Members were deceived in this regard as a result of Defendant's actions.  
7 Plaintiff's and Class Members' purchasing decisions were supported by the prominent U.S.A.  
8 representations made by Defendant, which is absent from most of Defendant's wet/dry vacuum  
9 competitors. Plaintiff believed at the time he purchased the SHOP-VAC wet/dry vacuums that  
10 he was in fact supporting U.S. jobs and the U.S. economy.

11 19. Plaintiff suffered an "actual injury" each time he purchased Defendant's SHOP-  
12 VAC wet/dry vacuum because Plaintiff's money was taken by Defendant as a result of  
13 Defendant's false "MADE IN THE USA" claims set forth on the SHOP-VAC wet/dry vacuums.  
14 As such, Plaintiff and Class Members were injured as a result of Defendant's false "MADE IN  
15 THE USA" representations that are at issue in this litigation.

16 **CLASS ALLEGATIONS**

17 20. Plaintiff brings this action on behalf of himself as an individual and on behalf of  
18 all other persons similarly situated in the State of California who purchased Defendant's SHOP-  
19 VAC wet/dry vacuum. Specifically, excluded from the class is any persons who have a  
20 controlling interest in SHOP-VAC, any of SHOP-VAC's parent companies, subsidiaries, and  
21 SHOP-VAC's officers, directors, managers, shareholders and members of their immediate  
22 families; and their heirs, successors and assigns (the "Class") pursuant to Code of Civil  
23 Procedure § 382 and Business & Professions Code § 17200 *et seq.* The class also does not  
24 include any persons who previously filed suit against SHOP-VAC for similar violations of  
25 California law.

26 21. The members of the Class are so numerous that joinder of all members is  
27 impracticable. The disposition of their claims in a class action will provide substantial benefits  
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1 to the parties and the Court. On information and belief, the exact number and identities of the  
2 members of the Class are readily ascertainable from the records in Defendant's possession.

3 22. There is a well-defined community of interest in the questions of law and fact  
4 involved in this case.

5 23. All causes of action herein have been brought and may properly be maintained as  
6 a class action pursuant to the provisions of Code of Civil Procedure section 382 because there is  
7 a well-defined community of interest in the litigation and the proposed class is easily  
8 ascertainable:

9 a. Numerosity: On information and belief, the Class is so numerous that the  
10 individual joinder of all members would be impracticable.

11 b. Common Questions Predominate: Common questions of law and fact  
12 exist as to all members of the Class, and those questions clearly predominate over any questions  
13 that might affect members individually. These common questions of law and fact include, for  
14 example, whether Defendants violated Section 17533.7 of the California Business & Professions  
15 Code by misrepresenting the national origin of its wet/dry vacuum products because the  
16 component parts of these products are manufactured outside the United States and whether  
17 Defendant's actions in this regard constitute an unfair, unlawful, or fraudulent business practice  
18 pursuant to Section 17200 et seq. of the California Business & Professions Code.

19 c. Typicality: On information and belief, Plaintiff's claims are typical of the  
20 claims of the members of the Class. Plaintiff and all members of the Class sustained damages  
21 arising out of Defendant's common course of conduct complained herein.

22 d. Adequacy: Plaintiff will fairly and adequately protect the interest of the  
23 members of the Class because Plaintiff has no interests which are adverse to the interests of  
24 absent class members and because Plaintiff has retained counsel who possesses significant  
25 litigation experience regarding alleged violations of consumer statutes.

26 e. Superiority: A class action is superior to other available means for the fair  
27 and efficient adjudication of this controversy since individual joinder of all members would be  
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1 impracticable. Class action treatment will permit a large number of similarly situated persons to  
2 prosecute their common claims in a single forum simultaneously, efficiently and without the  
3 unnecessary duplication of effort and expense that numerous individual actions would engender.  
4 Furthermore, since most class members' individual claims for damages are likely to be modest,  
5 the expenses and burdens of litigating individual actions would make it difficult or impossible  
6 for individual members of the Class to redress the wrongs done to them. An important public  
7 interest will be served by addressing the matter as a class action, substantial economies to the  
8 litigants and to the judicial system will be realized and the potential for inconsistent or  
9 contradictory judgments will be avoided.

10 24. The amount in controversy as to Plaintiff (individually) or any other individual  
11 Class Member does not exceed \$10.00 and the amount in controversy as to all Class Members,  
12 inclusive of attorneys' fees and costs, and injunctive relief (to the extent it can be valued) does  
13 not exceed \$4,999,000. Under no scenario, is the total amount of damages that Plaintiff seeks in  
14 this action in excess of \$4,999,000. Accordingly, no federal court has "original jurisdiction"  
15 over this claim pursuant to, *inter alia*, the Class Action Fairness Act of 2005 ("CAFA"), codified  
16 in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b), which provides that federal courts have  
17 "original jurisdiction" only where there is diversity of citizenship, the action is between citizens  
18 of different states, and the amount in controversy exceed \$5,000,000, exclusive of fees and  
19 costs. 28 U.S.C. § 1332(d).

20 a. Federal courts are courts of limited jurisdiction, which strictly construe their  
21 own jurisdiction. *Lowdermilk v. U.S. Bank National Ass'n* (2007) 479 F.3d  
22 994, 998. It is well established that the plaintiff is the "master of her  
23 complaint" and can "plead to avoid federal jurisdiction" *Id.* at 998-99. Thus,  
24 when the damages sought by plaintiff appear from the four corners of the  
25 complaint to be less than the jurisdictional amount, as in this case, the  
26 defendant seeking removal must not only contradict the plaintiff's own  
27 assessment of damages, but must overcome the presumption against federal  
28



jurisdiction by showing plaintiff is "legally certain" to recover at least five million dollars. *Id.* at 999. In fact, a plaintiff may sue for less than the amount she may be entitled to if she wishes to avoid federal jurisdiction and remain in state court subject only to a "good faith" requirement in pleading, which is inherent in every filing. *See St. Paul Mercury Indem. Co. v. Red Cab Co.* (1938) 303 U.S. 283, 288-89.

25. Plaintiff and Class Members do not seek Defendant's overall profits or gross revenues from the sale of the wet/dry vacuums that are at issue in this litigation because it is not the proper measure of damages in this case.

### **FIRST CAUSE OF ACTION**

#### **(Violation of Consumers Legal Remedies Act As Against All Defendants)**

26. Plaintiff realleges and incorporates herein by reference all of the allegations contained in Paragraphs 1 through 25, inclusive, of this complaint as though fully set forth herein.

27. California Civil Code Section 1750 *et seq.* (entitled the Consumers Legal Remedies Act) provides a list of "unfair or deceptive" practices in a "transaction" relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in promulgating The Consumers Legal Remedies Act is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

[C]onstrued liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

28. Defendant's products constituted "goods" as defined in Civil Code Section 1761(a).

29. Plaintiff, and Class members, are each a "Consumer" as defined in Civil Code Section 1761(d).

30. Each of Plaintiff's purchases of Defendant's products constituted a "transaction"



1 as defined in Civil Code Section 1761(e).

2 31. Civil Code Section 1770(a)(4) and (9) provides that "[t]he following unfair  
3 methods of competition and unfair or deceptive acts or practices undertaken by any person in a  
4 transaction intended to result or which results in the sale or lease of goods or services to any  
5 consumer are unlawful: Using deceptive representations or designations of geographic origin in  
6 connection with goods or services....Advertising good or services with intent not to sell them as  
7 marketed."

8 32. Defendant violated Civil Code Section 1770(a)(4) and (9) by marketing and  
9 representing that its products are "MADE IN THE USA" when they actually contain component  
10 parts that are manufactured outside of the United States.

11 33. It is alleged on information and belief that Defendant's violations of the  
12 Consumer's Legal Remedies Act set forth herein were done with awareness of the fact that the  
13 conduct alleged was wrongful and were motivated solely for increased profit. It is also alleged  
14 on information and belief that Defendant did these acts knowing the harm that would result to  
15 Plaintiff and that Defendant did these acts notwithstanding that knowledge.

16 34. At this time, Plaintiff is not seeking damages under Civil Code § 1780. Thus,  
17 pursuant to Civil Code § 1780(d),<sup>1</sup> Plaintiff is not required *per se* to give a 30-day notice prior to  
18 filing this Complaint. Plaintiff reserves his right to provide such notice and to amend this  
19 Complaint at a later time to assert a claim for monetary damages Civil Code § 1780.

20 35. As a direct and proximate result of Defendant's violations of the Consumers  
21 Legal Remedies Act, Plaintiff and Class members are entitled to: (a) a declaration that  
22 Defendants violated the Consumers Legal Remedies Act, and (b) an injunction preventing  
23 Defendant's unlawful actions. Plaintiff and Class Members suffered an "actual injury" because  
24

25 <sup>1</sup> Section 1780(d) states: "An action for injunctive relief brought under the specific provisions  
26 of Section 1770 may be commenced without compliance with subdivision (a). Not less than 30  
27 days after the commencement of an action for injunctive relief, and after compliance with  
28 subdivision (a), the consumer may amend his or her complaint without leave of court to include a  
request for damages. The appropriate provisions of subdivision (b) or (c) shall be applicable if  
the complaint for injunctive relief is amended to request damages."

1 Plaintiff and Class Members' money was taken by Defendant as a result of Defendant's false  
 2 "MADE IN THE USA" claims set forth on the SHOP-VAC wet/dry vacuums.

### 3 SECOND CAUSE OF ACTION

4 (Violation of Business & Prof. Code Section 17200 *Et Seq.* As Against All Defendants)

5 36. Plaintiff realleges and incorporates herein by reference all of the allegations  
 6 contained in Paragraphs 1 through 35, inclusive, of this complaint as though fully set forth herein.

7 37. Business & Professions Code section 17200 *et seq.* provides that unfair  
 8 competition means and includes "any unlawful, unfair or fraudulent business act or practice and  
 9 unfair, deceptive, untrue or misleading marketing."

10 38. By and through their conduct, including the conduct detailed above, Defendant  
 11 engaged in activities which constitute unlawful, unfair, and fraudulent business practices  
 12 prohibited by Business & Professions Code Section 17200 *et seq.* Beginning at an exact date  
 13 unknown as yet and continuing up through the present Defendant committed acts of unfair  
 14 competition, including those described above, by engaging in a pattern of "unlawful" business  
 15 practices, within the meaning of Business & Professions Code Section 17200 *et seq.*, by  
 16 manufacturing, distributing, marketing products with a false country of origin designation which  
 17 violates Section 17533.7 [by falsely claiming that the products referenced herein are "MADE IN  
 18 THE USA" when they are in actuality made with component parts manufactured outside of the  
 19 United States].

20 a. In addition, beginning at an exact date unknown as yet and continuing up  
 21 through the present Defendant committed additional acts of unfair  
 22 competition, including those described above, by engaging in a pattern of  
 23 "unlawful" business practices, within the meaning of Business & Professions  
 24 Code Section 17200 *et seq.*, by misrepresenting the SHOP-VAC wet/dry  
 25 vacuum country of origin as "MADE IN THE USA," so third-party  
 26 distributors that sell Defendant's wet/dry vacuums to the federal government  
 27 could unwittingly sell "foreign made" products in violation of the provisions  
 28

1 of the Buy American Act. See 41 USC §§ 10a-10d.

2 39. Beginning at an exact date unknown as yet and continuing up through the present,  
3 Defendant committed acts of unfair competition that are prohibited by Business and Professions  
4 Code section 17200 *et seq.* Defendant engaged in a pattern of "unfair" business practices that  
5 violate the wording and intent of the statutes, by engaging in practices that threatens an incipient  
6 violation of law, or violates the policy or spirit of laws because its effects are comparable to or  
7 the same as a violation of the law by manufacturing, distributing, and marketing products with a  
8 false country of origin designation and violating Section 17533.7 by falsely claiming that the  
9 products referenced herein are "MADE IN THE U.S.A." when they actually contain component  
10 parts manufactured outside of the United States.

11 a. Alternatively, Defendant engaged in a pattern of "unfair" business practices  
12 that violate the wording and intent of the statutes, by engaging in practices  
13 that are immoral, unethical, oppressive or unscrupulous, the utility (if any) of  
14 which conduct is far outweighed by the harm done to consumers and public  
15 policy by manufacturing, distributing, marketing, and advertising products  
16 with the false claim that the products referenced herein are "MADE IN THE  
17 USA."

18 b. Alternatively, Defendant engaged in a pattern of "unfair" business practices  
19 that violate the wording and intent of the statutes, by engaging in practices  
20 wherein: (1) the injury to the consumer was substantial; (2) the injury was not  
21 outweighed by any countervailing benefits to consumers or competition; and  
22 (3) the injury was of the kind that the consumers themselves could not  
23 reasonably have avoid by manufacturing, distributing, marketing, and  
24 advertising products with the false claim that the products referenced herein  
25 are "MADE IN THE U.S.A."

26 40. Beginning at an exact date unknown as yet and continuing up through the present,  
27 Defendant committed acts of unfair competition, including those described above, prohibited by  
28

1 Business and Professions Code section 17200 *et seq.* by engaging in a pattern of "fraudulent"  
2 business practices within the meaning of Business & Professions Code section 17200 *et seq.*, by  
3 manufacturing, distributing, marketing products with a false country of origin designation and  
4 violating Section 17533.7 by falsely claiming that the products referenced herein are "MADE IN  
5 USA."

6 41. Defendant engaged in these unlawful, unfair and fraudulent business practices for  
7 the primary purpose of collecting unlawful and unauthorized monies from Plaintiff and all others  
8 similarly situated; thereby unjustly enriching Defendants.

9 42. As a result of the repeated violations described herein, Defendant received and  
10 continues to receive unearned commercial benefits at the expense of their competitors and the  
11 public.

12 43. Defendant's unlawful, unfair and fraudulent business practices presents a  
13 continuing threat to the public in that Defendant continues to engage in illegal conduct.

14 44. Such acts and omissions are unlawful and/or unfair and/or fraudulent and  
15 constitute a violation of Business & Professions Code section 17200 *et seq.* Plaintiff reserves the  
16 right to identify additional violations by Defendant as may be established through discovery.

17 45. As a direct and legal result of their unlawful, unfair and fraudulent conduct  
18 described herein, Defendant has been and will be unjustly enriched by the receipt of ill-gotten  
19 gains from customers, including Plaintiff, who unwittingly provided their money to Defendant  
20 based on Defendant's fraudulent country of origin designation. The proper measure of the ill-  
21 gotten gains is set forth in the analysis contained in the seminal case of *Colgan v. Leatherman*  
22 *Tool Group, Inc.* (2006) Cal.App.4<sup>th</sup> 663 and is not determined by simply claiming that  
23 Defendant's overall "revenues" and/or "gross profits" exceeds \$5 million dollars as it pertains to  
24 the wet/dry vacuums that are at issue in this litigation.

25 46. Plaintiff and Class Members suffered an "actual injury" because Plaintiff and  
26 Class Members' money was taken by Defendant as a result of Defendant's false "MADE IN  
27 THE USA" claims set forth on the SHOP-VAC wet/dry vacuums.

28

47. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys' fees under Code of Civil Procedure section 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

### THIRD CAUSE OF ACTION

**(Violation of Business & Professions Code § 17533.7 As Against All Defendants)**

48. Plaintiff realleges and incorporates by reference Paragraphs 1 through 47, inclusive, as if set forth in full herein.

49. **Business & Professions Code Section 17533.7 provides:**

It is unlawful for any person, firm, corporation or association to sell or offer for sale in this State any merchandise on which merchandise or on its container there appears the words "Made in U.S.A." "Made in America," "U.S.A.," or similar words when the merchandise or *any article, unit, or part thereof*, has been entirely or substantially made, manufactured, or produced outside of the United States. (emphasis added).

50. Defendant violated Business & Professions Code Section 17533.7 by selling and offering to sell merchandise in the State of California with the "MADE IN THE USA" label as fully set forth herein. The merchandise at issue in this case actually contains component parts that are manufactured outside of the United States.

51. It is alleged on information and belief that Defendant's violations of Business & Professions Code Section 17533.7 was done with awareness of the fact that the conduct alleged was wrongful and were motivated solely for increased profit. It is also alleged on information and belief that Defendant did these acts knowing the harm that would result to Plaintiff and that Defendant did these acts notwithstanding that knowledge.

52. As a direct and proximate result of Defendant's violations of Business & Professions Code Section 17533.7, Plaintiff and Class members are entitled to restitution of excess monies paid to Defendant by Plaintiff and Class members relating to the false "MADE IN THE USA" claims on Defendant's wet/dry vacuums. The proper measure of damages in this regard is set forth in the analysis contained in *Leatherman* and is not determined by simply

1 claiming that Defendant's overall "revenues" and/or "gross profits" exceeds \$5 million dollars as  
2 it pertains to the wet/dry vacuums that are at issue in this litigation.

3 53. Plaintiff and Class Members suffered an "actual injury" because Plaintiff and  
4 Class Members' money was taken by Defendant as a result of Defendant's false "MADE IN  
5 THE USA" claims set forth on the SHOP-VAC wet/dry vacuums.

6 54. In prosecuting this action for the enforcement of important rights affecting the  
7 public interest, plaintiff seeks to recover attorneys' fees under Section 1021.5 of the Code of  
8 Civil Procedure, which is available to a prevailing plaintiff who wins relief for the general  
9 public.

10 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

11 **PRAYER**

12 1. Damages according to proof as to the third cause of action (See *Colgan v.*  
13 *Leatherman Tool Group, Inc.*, Cal.App.4<sup>th</sup> 663,696 (2<sup>nd</sup> Dist. 2006));

14 2. For a judgment declaring this action to be a proper class action;

15 3. Declaring that Defendant violated the provisions of California Business &  
16 Professions Code §§ 17200 et seq.;

17 4. Pursuant to California Business & Professions Code Section 17204, Civil Code  
18 Section 1780, and pursuant to the equitable powers of this Court, enjoining Defendant, their  
19 subsidiaries, affiliates, and their successors, agents, servants, officer, directors, employees, and  
20 all persons, acting in concert with them, directly or indirectly, from engaging in conduct  
21 violative of California law as fully detailed herein;

22 5. Pursuant to Business & Professions Code Section 17204, requiring Defendant to  
23 provide restitution to compensate, and to restore all persons in interest, including all Class  
24 Members, with all ill-gotten monies acquired by means of Defendant's unfair competition, which  
25 is measured by the analysis contained in the seminal case of *Colgan v. Leatherman Tool Group,*  
26 *Inc.* (2006) Cal.App.4<sup>th</sup> 663;

27 6. A declaration that Defendant violated Business & Professions Code § 17533.7;  
28



1           7.     Plaintiff's reasonable attorneys' fees as it relates to all three causes of action  
2 (pursuant to Civil Code § 1780 as it relates to the first cause of action and pursuant to Code of  
3 Civil Procedure § 1021.5 as it relates to the second and third causes of action);

4           8.     For costs of suit incurred herein; and


5           9.     For such other and further relief as this Court finds just, equitable and proper,  
6 including, but not limited to, the remedy of disgorgement.

7 Dated: February 19, 2007

Respectfully submitted,

DEL MAR LAW GROUP, LLP

by

  
JOHN H. DONBOLI  
JL SEAN SLATTERY  
Attorneys for Plaintiff RICHARD A. SILBER, an  
individual and on behalf of all others similarly  
situated



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>JOHN H. DONBOLI (SBN: 205218)</b> <b>JL SEAN SLATTERY (SBN: 210965)</b> <b>DEL MAR LAW GROUP, LLP</b> <b>322 Eighth Street, Suite 105, Del Mar, CA 92014</b> TELEPHONE NO.: 858-793-6244 FAX NO.: 858-793-6005		<b>CM-010</b>  RECEIVED 2008 FEB 19 PM 4:44
ATTORNEY FOR (Name): <b>Plaintiff RICHARD A. SILBER</b>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>330 W. Broadway</b> MAILING ADDRESS: <b>330 W. Broadway</b> CITY AND ZIP CODE: <b>San Diego 92101</b> BRANCH NAME: <b>Hall of Justice</b>		
CASE NAME: <b>SILBER v. SHOP-VAC CORPORATION</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: <b>37-2008-00078687-CU-BT-CTL</b>  JUDGE:  DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
3. Type of remedies sought (check all that apply):  
 a. ☒ monetary     b. ☒ nonmonetary; declaratory or injunctive relief     c. ☒ punitive
4. Number of causes of action (specify): Three
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 19, 2008

John H. Donboli, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed in sanctions).
  - File this cover sheet in addition to any cover sheet required by local court rule.
  - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
  - Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00078687-CU-BT-CTL CASE TITLE: Silber vs. Shop-Vac Corporation

### NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

#### ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

#### ADR OPTIONS

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants; and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

2

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): Richard A. Silber		
DEFENDANT(S): Shop-Vac Corporation		
SHORT TITLE: SILBER VS. SHOP-VAC CORPORATION		
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>		CASE NUMBER: 37-2008-00078687-CU-BT-CTL

Judge: Luis R. Vargas

Department: C-63

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- |                                                                             |                                                                         |
|-----------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Court-Referred Mediation Program                   | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration           |
| <input type="checkbox"/> Private Neutral Evaluation                         | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial                                 | <input type="checkbox"/> Private Reference to General Referee           |
| <input type="checkbox"/> Private Summary Jury Trial                         | <input type="checkbox"/> Private Reference to Judge                     |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration                    |
| <input type="checkbox"/> Other (specify): _____                             |                                                                         |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 02/25/2008

JUDGE OF THE SUPERIOR COURT

SDSC CIV-388 (Rev 01-07)

STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

Page: 1

JOHN H. DONBOLI (SBN: 205218)  
 JL SEAN SLATTERY (SBN: 210965)  
 DEL MAR LAW GROUP, LLP  
 322 8<sup>th</sup> Street, Suite 101  
 Del Mar, CA 92014  
 Telephone: (858) 793-6244  
 Facsimile: (858) 793-6005

Attorneys for Plaintiff: RICHARD A. SILBER, an individual and on behalf  
 of all others similarly situated

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

RICHARD A. SILBER, an individual and on  
 behalf of all others similarly situated,

Plaintiff,

vs.

SHOP-VAC CORPORTATION, a Pennsylvania  
 Corporation, and DOES 1 through 100,  
 inclusive,

Defendants.

CASE NO. 37-2008-00078687-CU-BT-CTL

CLASS ACTION

**AFFIDAVIT OF VENUE**

I, RICHARD A. SILBER, declare as follows:

1. I am an individual residing in San Diego County. I am the proposed class  
 representative in the above-captioned litigation matter. I have personal knowledge of all matters  
 set forth herein and could competently testify thereto if called to do so at the time of any hearing  
 or trial in this case, except as to those matters averred on information and belief, which I believe  
 to be true. This affidavit is provided in support of what I understand to be statutory requirements  
 under California law (i.e., California Civil Code § 1780(c)).


2. The transactions that form the basis of this action or a substantial portion thereof  
 occurred in San Diego County, California.

3. The Class Action Complaint, which I reviewed and authorized to be filed,

1 contains a cause of action for violation of the Consumers Legal Remedies Act as against  
2 defendant SHOP-VAC CORPORATION, and DOES 1 through 100.

3 4. As per the foregoing assertions, this cause of action has been commenced in the  
4 proper county or judicial district for trial, which is San Diego County, California.

5 I declare under penalty of perjury under the laws of California, that the foregoing is true  
6 and correct and that this declaration was executed on February 19, 2008, at San Diego,  
7 California.

8   
9 RICHARD A. SILBER

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**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 149496 - SR  
\* \* C O P Y \* \*  
Apr 11 08. 2008  
15:31:49**

**Civ Fil Non-Pris**

USAO #: 08CV0637  
Judge...: JANIS L. SAMMARTINO  
Amount.:  
Check#: BC#256493 \$350.00 CK

**Total-> \$350.00**

FROM: SILBER V. SHOP-VAC  
CIVIL FILING  
BC#8654 \$30  
BC#256493 \$320

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Richard A. Silber, an individual and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John H. Donboli and JL Sean Slattery, Del Mar Law Group, LLP, 322 8th St., Ste. 101, Del Mar CA 92014;

## DEFENDANTS

Shop-Vac Corp, A Pennsylvania Corp, and Does 1 through 100, inclusive

U.S. DISTRICT COURT  
Lycoming County, PA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(415) 433-1500

Attorneys (If Known) Kevin J. Senn and Susan D. Condon, Armstrong Teasdale LLP, Three Embarcadero Center, Ste. 2310, San Francisco, CA 94111;

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         |                                       |                            |                                                               |                            |                            |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	REAL PROPERTY	LABOR/EMPLOYMENT	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 424 Copyrights <input type="checkbox"/> 430 Patent <input type="checkbox"/> 440 Trademark <input type="checkbox"/> 450 Securities/Commodities/Exchange <input type="checkbox"/> 460 Consumer Challenge 12 USC 3410 <input type="checkbox"/> 470 Other Statutory Actions <input type="checkbox"/> 480 Agricultural Acts <input type="checkbox"/> 490 Environmental Matters <input type="checkbox"/> 495 Energy Allocation Act <input type="checkbox"/> 500 Freedom of Information Act <input type="checkbox"/> 500 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1446; 28 U.S.C. 1332

Brief description of cause:

Complaint for violations of California Consumers Legal Remedies Act & CA Business & Professions Code

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

4,999,000.00

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

4/8/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

14949

AMOUNT

350.

APPLYING IFP

JUDGE

MAJ. JUDGE

4/8/08

JS 44 Reverse (Rev 11/04)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

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**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.